

SOUTHERN ENVIRONMENTAL LAW CENTER

200 WEST FRANKLIN STREET, SUITE 330

CHAPEL HILL, NC 27516

Telephone 919-967-1450
Facsimile 919-929-9421
selcnc@selcnc.org

Charlottesville, VA
Chapel Hill, NC
Atlanta, GA

April 27, 2009

VIA FACSIMILE AND EMAIL

Kindra Callahan, Regional FOIA Officer
U.S. Environmental Protection Agency, Region 4
Fax: 404-562-8054
Email: r4foia@epa.gov

CONTROL NO.	ARIN	00 400-09
Response Due:	5/26/09	
Category:	Other	
	APRMD	SESD
	ML	EAD
	WVAD	OTHER

Re: FOIA Request—Cliffside Steam Station, Air Permits

Dear Ms. Callahan:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Southern Environmental Law Center ("SELC") requests all documents in the possession of the U.S. Environmental Protection Agency, Region 4, ("EPA Region 4") relating to the permitting of Duke Energy Carolinas, LLC's ("Duke") Cliffside Steam Station, including Cliffside Unit 6, by the North Carolina Department of Environment and Natural Resources, Division of Air Quality ("DAQ") from January 14, 2008 to the present. This request specifically includes documents relating to Duke's Title V Renewal Application for Cliffside, submitted on January 14, 2008 and amended on January 30, 2008, and Air Quality Permits Nos. 04044T28 and 04044T29, dated January 29, 2008 and March 13, 2009, respectively.

As used in this letter, "documents" includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession or control of EPA Region 4. This request specifically excludes documents that EPA Region 4 already has provided in response to SELC's December 23, 2008 FOIA request and documents that are available on EPA Region 4's website or on the DAQ website at <http://daq.state.nc.us/permits/psd/cliffside.shtml>. Please provide any electronic records in native file format.

I request that you provide access to and copies of these documents without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), because reduction or waiver of fees would contribute to public understanding of EPA's activities and is not in SELC's commercial interest. The public interest standard of the fee waiver provision of the FOIA should be "liberally construed" in favor of an organization like SELC. McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987). In support of our request for a fee waiver, the following information addresses in detail the six factors identified by the U.S. Department of Justice's Freedom of Information Act Guide & Privacy Act Overview (May 2004).

RCVD EPA REGION 4
APR 27 P 7 44
FREEDOM OF
INFORMATION OFFICE

1. **The subject matter of the requested documents specifically concerns identifiable "operations or activities of the government."**

The requested documents concern air permits for a large coal-fired power plant. Although DAQ is the agency responsible for issuing such permits, EPA, an agency of the federal government, has responsibility for reviewing and commenting on DAQ's proposals. In addition, EPA often consults with state agencies, other federal agencies, permit applicants, and other parties regarding permit applications.

2. **The requested documents will be meaningfully informative in relation to the subject matter of the request, and the disclosure is therefore "likely to contribute" to an understanding of specific government operations or activities.**

Disclosure of documents in the possession of EPA regarding Cliffside permitting decisions is likely to contribute to an understanding of these decisions and EPA's role in it, as discussed under factor no. 1, above.

3. **Disclosure of the requested documents will contribute to the understanding of the public at large.**

SELC disseminates public information on environmental issues, including air quality issues, in the Southeast. See 5 U.S.C. § 552(a)(4)(A)(iii). SELC's website includes information regarding SELC projects, and SELC frequently publishes reports and issues press releases regarding its projects. See <http://southernenvironment.org/newsroom/>. SELC also assists the public in locating information relating to a particular topic by collecting and posting relevant information, documents, and links to other websites. See, e.g., http://www.southernenvironment.org/cases/duke_energy_expansion_at_cliffside/.

4. **Disclosure of the requested documents will contribute significantly to public understanding of government operations or activities.**

SELC will use the requested records to participate in the public process concerning the permitting of this facility, and to educate both its partner environmental groups and the public concerning the issues raised by the permits. See Friends of the Coast Fork v. U.S. Dept. of the Interior, 110 F.3d 53, 55 (9th Cir. 1997); Carney v. U.S. Dept. of Justice, 19 F.3d 807, 814 (2nd Cir. 1994).

5. **SELC has no commercial interest in the disclosure of the requested documents.**

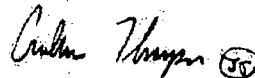
SELC, a non-profit organization, has no commercial interest in the requested records. As used in the FOIA, "commercial interest" means information that relates to commerce, trade, or profit. McClellan, 835 F.2d at 1285 (holding that information that might result in further compensation to requesters for a tort claim did not give rise to a commercial interest). The agency records requested do not relate to commerce, trade, or profit, nor does SELC seek to engage in commerce or trade, or to profit from, the requested records.

6. **"The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest."**

This factor is not applicable (please see information pertinent to factor no. 5, above).

Thank you for your prompt attention to this matter. Should the volume of responsive documents be large, I ask that the documents be made available for inspection by SELC prior to any copying. Please contact me by telephone regarding the manner in which these documents will be made available.

Sincerely,



Gudrun Thompson



Jill Tauber
<jtauber@selcnc.org>
04/27/2009 03:01 PM

To Group R4Foia@EPA
cc Gudrun Thompson <gthompson@selcnc.org>
bcc

Subject 4-27-09 FOIA Request re: Cliffside Steam Station

Dear Ms. Callahan:

On behalf of Gudrun Thompson and the Southern Environmental Law Center, please find the attached public records request, which also has been sent by facsimile. Thank you in advance for your cooperation.

Sincerely yours,
Jill Tauber

Jill Tauber*
Southern Environmental Law Center
NC/SC Office
200 West Franklin Street, Suite 330
Chapel Hill, North Carolina 27516-2559
(919) 967-1450
Fax (919) 929-9421
jtauber@selcnc.org
SouthernEnvironment.org

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4-27-09 EPA records req re Cliffside permitting.pdf



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 21, 2009

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Gudrun Thompson
Southern Environmental Law Center
200 West Franklin Street
Suite 330
Chapel Hill, NC 27516

RE: Request Number 04-RIN-00400-09

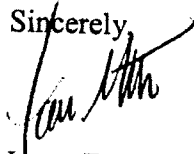
Dear Mr. Thompson:

This is in response to your request for a waiver of fees for the processing of your Freedom of Information Act (FOIA), 5 U.S.C. 552 request. Your FOIA request is seeking a copy of records regarding the permitting of Duke Energy Carolinas, LLC's (Duke) Cliffside Steam Station from January 14, 2008 to the present; and, records regarding Duke's Title V Renewal Application for Cliffside, and Air Quality Permit Numbers 04044T28 and 04044T29.

We have reviewed your fee waiver justification and based on the information you provided, we are granting your request for a fee waiver. However, this fee waiver does not include a waiver of fees for otherwise publically available records. The EPA's Region 4 office in Atlanta, GA will be responding to your information request.

If you have any questions concerning this fee waiver determination, please contact Vivian Warden of my staff at (202) 566-1667.

Sincerely,


Larry F. Gottesman
National FOIA Officer